Judge on such a question as an adjournment of a trial, and it very seldom does so; but, on the other hand, if it appears that the result of the order made below is to defeat the rights of the parties altogether, and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, then the Court has power to review such an order, and it is, to my mind, its duty to do so."

I am satisfied that if the learned Judge had the material before him which we have to-day, he would have exercised his discretion in favour of the appellant. The fact that he did not have the material before him in no way imputes blame to Mr. Skrine, who had only been instructed by other solicitors to appear and apply for an adjournment, in a letter dated the 4th of June, 1955. I think that an injustice may occur if the appellant is deprived of his right to defend the suit.

I would allow the appeal and reserve the question of the order to be made and the costs to be awarded for further argument.

Appeal allowed.

Solicitors: *Bannon & Bailey; Shearn, Delamore & Co.*

TAN TEIK LEONG v. REG.

[A.Cr.J. (Spenser Wilkinson J.) October 10, 1915]

[Penang — Criminal Appeal No. 36 of 1955]

Road Traffic — Motor Vehicles (Commercial Use) Regulations, reg. 3(5A) — Motor Vehicles Third Party Risks Regulations, reg. 3(1) — Causing to be let on hire a motor vehicle which was not an authorised vehicle — Causing to be used a motor vehicle without there being in force a sufficient policy of insurance in respect of third party risks — Meaning of "causes or permits."

Criminal law — Joinder of charges.

The appellant in this case was charged with a total of six charges, three of them being of causing to be let on hire motor vehicles which were not authorised vehicles contrary to reg. 3(5A) of the Motor Vehicles (Commercial Use) Regulations and three being of causing the said vehicles to be used without there being in force a sufficient policy of insurance in respect of third party risks contrary to reg. 3(1) of the Motor Vehicles Third Party Risks Regulations. The appellant was sentenced on all six charges and he subsequently appealed. On appeal, it was argued (a) that there was a misjoinder of charges which caused prejudice and embarrassment to the accused and (b) the prosecution had not proved its case and the appellant should not have been called upon for his defence.

Held: (1) there was nothing illegal in the joinder of the six charges as the various sections of the Criminal Procedure Code permitting joinder of charges are not mutually exclusive but cumulative; (2) the appellant was not in any way prejudiced in this case by the joinder of the charges; (3) on the facts there was insufficient evidence to prove that the cars were hired at all and even if they were, there was no evidence to show that the appellant caused or permitted the cars to be so used.

Cases referred to:—

(1) *Lim Yean Leong v. Public Prosecutor* (1940) M.L.J. 272.

(2) *Shave v. Rosner* (1954) 2 W.L.R. 1057.

MAGISTRATE'S CRIMINAL APPEAL.

S. Thillaimuthu for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant in this case was charged with a total of six charges. Three of these were charges under Regulation 3(5A) of the Motor Vehicles (Commercial Use) Regulations of causing to be let out on hire a motor vehicle which was not an authorised vehicle. The first of these charges was in respect of motor car No. P. 5041 alleged to have been hired out on the 27th February, 1955 and two charges were in respect of motor car No. P. 6633 alleged to have been hired out on the 3rd March, 1955. The other three charges were that in connection with each of these hirings the appellant caused to be used the motor vehicle in question without there being in force a sufficient policy of insurance in respect of third party risks contrary to Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations.

The first point taken on the appeal was that there was a misjoinder of charges, and even if the joinder was not actually illegal it was suggested that it caused prejudice and embarrassment to the accused.

In my opinion, in view of the decided cases on the question of joinder, notably the case of *Lim Yean Leong v. Public Prosecutor*[1] there was nothing illegal in the joinder of these six charges. If as a result of hiring out a motor vehicle that motor vehicle is used without proper insurance then in my opinion the offence of using or causing the use of the motor vehicle without such insurance arises out of the hire transaction. In the case above cited it was decided that the provisions of the various sections permitting joinder of charges are not mutually exclusive but cumulative. Nor do I think that in fact the appellant was in any way prejudiced in the present case by the

joinder of charges, and in my opinion this ground of appeal must fail.

The next ground of appeal was that the prosecution had not proved its case and that the appellant should not have been called upon for his defence. The evidence of the 1st witness was to the effect that he called at the appellant's premises and asked to be shown the record of the hire of two vehicles in respect of which the appellant had a permit for the use of these vehicles as hired vehicles. These two vehicles are neither of them the motor car in respect of which the charges in this case were laid. The appellant was absent when this witness called at his premises, and his son produced what the 1st witness seems to have thought was the record of hire of the hired vehicles. In fact it was nothing of the kind. It was a block of printed forms which had been used by the appellant in his business in 1954 before the present system of hire and drive permits came into force on the 1st January, 1955. Amongst these forms this witness discovered entries which suggested to him that the cars in question in these proceedings No. P. 5041 and P. 6633 had been hired out and he put this so-called book in evidence as Exhibit P. 2. The entries referred to were not made by the appellant; and there was no evidence that they were made in the ordinary course of his business or upon his instructions or with his knowledge. In my opinion this so-called book was not evidence against the appellant and should not have been admitted.

P.W. 3 and P.W. 4 are the persons to whom the appellant is supposed to have wrongly hired out these cars. The evidence of P.W. 3, however, was that he went to the appellant's shop and took out car No. P. 5041 on trial at a time when the appellant was not in. The evidence of P. W. 4 was that he took out the car P. 6633 on two occasions on loan and not on hire, and that the appellant was not present when he took the car and that the car was taken without the appellant's permission.

The expressions "causing" and "permitting" in connection with the use of motor vehicles are discussed in the case of *Shave v. Rosner*[2]. The Lord Chief Justice in that case put the matter very clearly when he said (at page 1060):—

"When those two expressions 'causes or permits' are found in contrast or juxtaposition, 'permits' means giving leave and licence to somebody to use the car, and 'causes' involves a person who has authority to do so ordering or directing someone to use it. If I allow a friend of mine to use my motor-car, I am permitting him to use it. If I tell my chauffeur to bring my car round and drive me to the Courts, I am causing the car to be used."

I am unable to find any sufficient evidence in this case to prove that the two cars in question were hired at all; and even if they were, there is not a shred of evidence that the appellant caused or permitted the cars to be used. There was, therefore, no evidence before the Court on the charges of causing the motor vehicles to be let out on hire, and the appellant should not have been called upon for his defence in respect of these charges.

With regard to the charges relating to insurance, it may be that if these cars were driven by P.W. 3 or P.W. 4 they were uninsured during such use. If this be so, however, it was the witnesses who committed the offence and not the appellant, because, as I have already pointed out, there was no evidence that the appellant caused or permitted the use of these vehicles. The appellant, therefore, should not have been called upon for his defence in respect of these charges either.

In my opinion there was no evidence that the appellant committed any of the offences charged or any other offence, and I therefore quashed the convictions, and substituted an acquittal in respect of all the charges.

Appeal allowed.

Solicitors for the appellant: *Conaghan, Wreford & Thornton.*

SIU HAN KUN v. LEW TAN

[A.C.J. (Abdul Hamid J.) December 5, 1955]

[Kota Bharu — Civil Appeal No. 3 of 1955]

Evidence Ordinance, 1950, s. 98 — Foreign expression — Court Interpreter's translation — Accuracy of.

If it is intended to impugn the accuracy of the Court Interpreter's translation, evidence has to be called to show what the correct translation should be.

CIVIL APPEAL.

Lee Saik Kee for the appellant.

Respondent in person.

Abdul Hamid J. : — This appeal is against the award made by the Deputy Commissioner for Labour against the appellant for piling work done in the construction of some Government buildings. The sum awarded was $1,264.20, apart from the $200 admitted by the appellant to be still owing by him in respect of some other work.